
(1984) 07 KL CK 0034

In the High Court Of Kerala

Case No : W.A. Nos, 273, 373 and 394 of 1981 and O.P. 3849/79

P. Ramadasan and Others

APPELLANT

Vs

P.A. Johny and Others

RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:

Kerala Public Service Commission (Additional Functions) Act, 1963 — Section 3

Citation : (1984) KLJ 608

Hon'ble Judges : K. Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Advocate : V. Sreedharan Nair, S.P. Aravindakshan Pillai, N. Mohandas in Writ Appeals and N. Nandakumara Menon in O.P, for the Appellant; K.S. Radhakrishnan, T.C.N. Menon, K.P.G. Menon, N. James Koshy, C.P. Sudhakara Prasad, T.P. Kelu Nambiar, T.D. Rajalakshmi, R. Krishnan Nair and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhaskaran, Ag. C.J.

1. Writ Appeal No. 273 of 1981 is against the judgment in O.P. No. 2464 of 1979-I, W.A. No. 373 of 1981 is against the judgment in O.P. No. 212 of 1979 and W.A. No. 374 of 1981 is against the judgment in O.P. No. 52 of 1979. By the judgments under appeal, the Government Letter No. 21012-KLA2 of 1978 dated 18-4-79 marked as Ext. P7 in O.P. No. 212 of 1979, has been quashed and it is aggrieved by that appellants have filed the appeals. O.P. No. 3849 of 1979 is for quashing that order. The point falls within a very short compass. In the Engineering Electrical Services of the Kerala State Electricity Board, as per Board order dated 13-7-1967, 50% of the posts were required to be filled up by direct recruitment from Engineering Graduates. Later on, by order dated 9-12-1970, 50% reserved for direct recruitment was subjected to a modification by providing for 10% to be from inservice hands having graduate qualification. Later, by order dated 30-6-1981 marked as Ext. P-1, a further modification was made for the

10% to be selected from inservice hands, namely, that they should have three years" service in the feeder category. Still later, the 10% earmarked for inservice hands was converted into promotion quota in 1978 by order dated 18-4-1979. It was required that three years" service after graduation was necessary for promotion to the higher post of Assistant Engineer with respect to the 10% promotion quota. This prescription of a new qualification was done without consulting the Public Service Commission. The question is whether for want of consultation with the Public Service Commission, this qualification prescribed is valid or not.

2. It is by virtue of the Kerala Public Service Commission (Additional Functions) Act, 1963, which is made applicable to the Kerala State Electricity Board, that the function of selecting the personnel for the Electricity Board has become the function of the Kerala Public Service Commission/Section 3 of the Kerala Public Service Commission (Additional Functions) Act, 1963 reads as follows:

3. Functions of the Public Service Commission in respect of services under the Electricity Board:-

(1) Notwithstanding anything contained in the Electricity (Supply) Act (Central Act 54 of 1948) or the rules or regulations made thereunder regarding the recruitment and conditions of Service of officers and servants of the Electricity Board, the Public Service Commission shall be consulted.--

(a) on all matters relating to methods of recruitment to services and posts under the Electricity Board;

(b) on the principles to be followed in making appointments to services and posts under the Electricity Board and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

It is therefore crystal clear that the Public Service Commission was to be consulted by the Board in matters concerning the principles to be followed in making appointments and promotions and regarding the suitability of candidates for such appointments, which certainly would include the prescription of qualifications also.

Shri V. Sreedharan Nair, the counsel for the appellants, submitted that by virtue of the provisions contained in Section 3(2) of the aforesaid Act, the Government had an overriding power in regard to matters with respect to which the consultation was required with the Public Service Commission. Sub-section (2) of Section 3 reads:

(2) In the case of any difference of opinion between the Public Service Commission and the Electricity Board on any matter, the Electricity Board shall refer the matter to the Government and the decision of the Government thereon

shall be final.

Provided that the Government before taking a decision against the advice of the Commission shall refer the matter to the Commission.

The power vested in the Government to resolve the difference of opinion between the Board on the one hand and the Public Service Commission on the other does not in anyway justify or legalise an action by the Board dispensing with the consultation altogether. After the process of consultation is over and the Board comes to a decision, it might be open to the Government in appropriate cases to override the advice of the Public Service Commission and accept the Board's decision. That does not mean that it is open to the Board or even for the Government to pass orders with respect to qualifications to be prescribed without consulting the Public Service Commission. In this view, we have absolutely no doubt that the learned Judge was perfectly justified in allowing the O.Ps. and quashing the Government letter dated 18-4-79 impugned in the writ petitions.

In the result, we dismiss the writ appeals and allow O.P. No. 3849 of 1979-G quashing Ext. P7 order. No order as to costs.